Canterbury Educational Services, Inc. and its wholly owned subsidiary, Canterbury Career Schools of Pittsburgh, Inc. *and* Edward J. Slifka. Case 6–CA–23121

August 31, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On March 25, 1992, Administrative Law Judge Bruce C. Nasdor issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed limited exceptions and a brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, to modify the remedy,[2] and to adopt the recommended Order, as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Canterbury Educational Services, Inc., Medford, New Jersey, and its wholly owned subsidiary, Canterbury Career Schools of Pittsburgh, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent also excepted to the judge's decision, alleging that it evidences bias and prejudice. On our full consideration of the record in these proceedings, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against the Respondent in his analysis and discussion of the evidence.

[2] Backpay shall be computed as set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[3] We find merit in the General Counsel's limited exceptions and shall conform the notice to the Order.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL offer to Edward J. Slifka, Dwight W. Wolff, and Steven B. Karnek immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any references to their discharges and that the discharges will not be used against them in any way.

WE WILL NOT discharge or otherwise discriminate against you for supporting Teamsters Local 249 or any other union.

WE WILL NOT threaten our employees with the closure of our facility because of their union membership, activities, and sympathies and the union membership, activities, and sympathies of any other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

CANTERBURY EDUCATIONAL SERVICES, INC. AND ITS WHOLLY OWNED SUBSIDIARY, CANTERBURY CAREER SCHOOLS OF PITTSBURGH, INC.

David L. Shepley, Esq., for the General Counsel.
Rayford T. Blankenship, President, and *John L. Rybolt (Blankenship & Associates)*, for the Respondent.
Edward J. Slifka, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge. This case was tried at Pittsburgh, Pennsylvania, on June 13 and July 23 and 24, 1991. The complaint and notice of hearing issued on February 1, 1991, alleging violations of Section 8(a)(1) and (3) of the Act, in that Respondent threatened employees if they selected the union as their bargaining representative, and terminated the employment of Slifka, Dwight W. Wolff, and Steven B. Karneck, because they engaged in protected activity. The complaint further alleges that Canterbury Educational Services, Inc. (CES) and Canterbury Career Schools of Pittsburgh, Inc. (Canterbury) are affiliated business enterprises constituting a single employer within the meaning of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs,[1] I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Respondent CES, a corporation with an office and place of business in Medford, New Jersey, has been engaged in the business of operating vocational schools in various locations around the United States. Respondent CES operates a school in Pittsburgh, Pennsylvania, through its wholly owned subsidiary, Respondent Canterbury.

During the 12-month period ending October 31, 1990, Respondent CES provided and performed educational services valued in excess of $1 million.

During the same period of time, Respondent CES, in the course and conduct of its operations provided and performed educational services valued in excess of $50,000 in States other than the State of New Jersey.

At all times material, Respondent Canterbury, a corporation with an office and place of business in Pittsburgh, Pennsylvania (Pittsburgh facility), has been engaged in the business of operating a vocational school for the training of truckdrivers.

Based on projection of its operations since on or about September 1990, at which time Canterbury commenced its operations in the course and conduct of its operations, it will annually provide and perform educational services valued in excess of $1 million.

During the period of time described above, Respondent Canterbury will receive an excess of $5000 in tuition from Federally funded programs.

Respondent CES is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent Canterbury is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondents collectively are now, and have been at all times material, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

General Teamsters, Chauffeurs and Helpers, Local 249 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Union) is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

CES is a holding company with several subsidiaries which furnish instructional courses in truckdriving and various other skills. Its headquarters are in Medford, New Jersey. Canterbury is a wholly owned subsidiary of CES, with a facility near Pittsburgh, Pennsylvania, providing instructional courses in driving tractor-trailers. Respondent, in its answer, admits that CES and Canterbury have some common officers and directors, including Stanton Pikus, who is president of CES and Canterbury.

Canterbury's students must participate in, and complete a course requiring a minimum of 9 weeks' instructions before taking the tests necessary to be licensed to drive tractor-trailers. To this end, Canterbury employs instructors who teach students in the classroom, and in the facilities yard performing maneuvers. They also are required to drive on local highways and city streets. In October 1990,[2] Canterbury employed approximately 15 instructors.

Canterbury commenced its operations in 1991, and on July 31, 1990, James Spratt was hired as the school director. Raymond Real worked for the holding company since 1987, and in January 1990, became the school's (Canterbury) director of education. Spratt supervised the other employees except those in the financial aid area. Spratt testified that only Pikus has the authority to be able to close Canterbury's Pittsburgh facility.

The management of both CES and Canterbury communciate frequently regarding various procedural decisions, for example hiring and firing Canterbury employees, work performance, rules regarding student deposits and advancement of funds, sales results, the production of Canterbury's employees' paychecks, budgeting, financial aid, and automobile registration.

According to the testimony of Pikus, profits of Canterbury can, and are, sometimes obtained by CES through access by CES to Canterbury's Pittsburgh bank account. This account could also function as a means for CES to pay Canterbury's bills, or to meet CES' responsibility to lend money to Canterbury in case Canterbury suffers a shortage of funds. Pamela Fish, clerk typist and receptionist, until May 23, 1991, testified that CES imposed budgetary limitations on Canterbury, including those covering the expenditures for postage. Paychecks and paystubs for Canterbury employees are captioned ''Canterbury Educational Services, Inc.,'' and are prepared by CES in New Jersey and mailed to Canterbury. Pikus testified that CES receives copies of all Canterbury's documents and contents of files.

Testimony and documentary evidence reflect that ''all ultimate decisions regarding hiring and firing'' of Canterbury employees were approved by CES. This is further evidenced by the fact ''Approval To Hire'' sheets were faxed from Canterbury by Reale to Jean Pikus, vice president of CES,

[1] Respondent's motion to correct the transcript is granted.

[2] All dates are in 1990, unless otherwise specified.

and returned to Canterbury with her approval noted thereon. CES established salaries for the Canterbury employees, making sure that they met the requirments as established for salaries throughout the system. Moreover, Pikus testified that CES has dissaproved requests for salary increases for Canterbury employees. CES and Canterbury have been covered under the same group insurance policy. Canterbury employees are given a handbook covering CES employees entitled ''Canterbury Educational Services, Inc./Associate Handbook.''

The Alleged Discriminatees

Slifka, Wolff, and Karnek commenced their employment as tractor-trailer driving instructors with Canterbury on September 4. Each filed a written application and was personally interviewed by Reale. They worked under the supervision of Reale and were given assignments in yard instruction including various backing maneuvers and over-the-road instruction on both highway and city streets.

By the end of September and early October, the three alleged discriminatees, particularly Wolff, became dissatisfied with their working conditions. They complained on several occasions to Reale about the lack of heat in the employee lunchroom, physical exams being conducted in the employee lunchroom, lack of heat in the trucks, and the failure of management to provide raingear for the instructors. Reale's response was that they, the instructors, would have to deal with their concerns. Wolff discussed calling the Union with Slifka and Karnek. They all agreed that the Union should be communicated with, and to that end, on October 23, Wolff telephoned William Cherilla, secretary-treasurer of the Union. He discussed working conditions and his interest in securing union representation for the instructors. At the time they were hired at Canterbury, and throughout their employment, the three held withdrawal cards from the Union. Later that day, October 23, Wolff went to the union office and obtained approximately 20 copies of a booklet, ''The Law And You,'' to be used for organizational purposes at Canterbury. The booklet contained a card which could be torn off captioned ''Authorization For Representation Under the National Labor Relations Act.'' This tearoff card served as a union authorization card.

On October 24, at his home prior to going to work, Wolff signed a union authorization card. On arriving at the job, prior to his 7 a.m. starting time, Wolff commenced discussing union organizing with other employees, encouraging them to pass out copies of the booklet and to solicit signatures on the union authorization cards. During this time, Slifka and Karnek assisted Wolff in his organizational activities. Prior to 7 a.m., Wolff spoke in the parking lot to at least six other employees. Wolff spoke to four other instuctors in the lunchroom about the Union and organization of Canterbury instructors. He also told the instructors that a union organizing meeting with Cherilla was to be held at 3:30 p.m. that day. Subsequently, Cherilla called him stating he couldn't make the meeting because he had a previous appointment and the meeting was rescheduled for and held on October 25.

Karnek signed a union authorization card on October 24, and gave it to Wolff about 3:35 p.m. the same day. Both Karnek and Wolff, on October 24, spoke to employees about the merits of union representation and distributed the booklet, ''The Law And You.'' Karnek spoke to every instructor except one, on October 25. The employee he did not approach worked nights and was not present at the facility on the day Karnek solicited.

Slifka signed a union card on October 24, and gave it to Wolff that same day. He spoke to employees about the merits of organization on the same day. Slifka also engaged in a discussion about organizing at the employee lunchroom during lunchtime. Several employees were present during this discussion.

In their testimony, all three of the alleged discriminatees specifically named those instructors solicited by them to sign union authorization cards.

A few minutes after the 3:30 p.m. quitting time, instructors Wolff, Slifka, Karnek, Cahillane, and Lisovich met in the parking lot and discussed the organizing conducted that day. After about 10 minutes, Reale, who had been speaking to another instructor, Wade, outside the building, according to Wolff's unrefuted testimony, hurriedly and angrily approached the group. When Reale came within a few feet of the instructors, he threw a copy of the booklet ''The Law And You'' on the ground in the direction of Wolff. He stated to them that if a union came in at Canterbury the Company would close the Pittsburgh facility and move its operations elsewhere. Wolff responded, ''you better start packing,'' and that the instructors had made an effort to deal with the problems without seeking union representation. Wolff stated that they tried to deal with Reale as an individual. Reale turned and walked away.

Wolff recalled Reale's comment as, ''Before I let any union come in here, we will pack it up and move the hell out.'' Slifka recalls Reale stating, ''Before I let a union come in here, we will pack up and move out.'' Karnek recalled, ''You are not bringing a union in here. If you do, we are packing up and leaving.'' Cahillane recalled, ''We will close the place down in a minute.'' All remember that Reale made his statement immediately after throwing the booklet on the ground in the middle of the employees.

Reale testified that he stated, ''It is not going to work. It is just not going to work. We just got here. It is a new company.''

Spratt testified with reference to what Reale told him minutes after the parking lot episode. According to his testimony, Reale told him, they are passing out union literature, ''well, I told them they couldn't do that. The school would close if that would happen.''

During the evening of October 24, Reale called Wolff by telephone at his home, and told him to report to work at 8:30 the next morning, instead of his usual 7 a.m. starting time. When Wolff reported in, Reale told him he was fired because he was unprofessional, lackadaisical, and had been observed leaning against cars while engaging in yard instruction. Wolff asked for a written statement of the charges against him but Reale did not furnish one. About 20 minutes later, Reale told him that he would receive a copy of the charges against him with his next paycheck. Wolff never received anything in writing referencing his discharge.

According to Wolff, during his tenure with Respondent, he received one evaluation from Reale. This was in October, and Reale read the evaluation briefly, regarding it as a good evaluation. He never received a copy of same, and none was offered into evidence. Reale verbally commented during the

evaluation interview that Wolff was doing a good job and in September and October, Reale told Wolff he was doing a good job.

Wolff admits he was told by Reale on two or three ocassions not to lean on cars in the parking lot. He never received any written warning or any discipline regarding this situation. Nor was he ever told by Reale that his job was in jeapordy. Wolff had no record of latenesses and missed only 2-1/2 days due to pneumonia.

Slifka reported to work at 7 a.m. on October 25. Later that morning, Reale requested Slifka report to his office. When Slifka reported, Reale advised him that a student evaluation of his teaching had been sent to CES and that other student evaluations had been filled out on October 24. Reale also informed Slifka that he had observed him instructing and that he, Reale, did not believe that Slifka ''had it'' to be an instructor. He gave Slifka a choice of being fired or resign. Slifka chose to be fired and left the facility.

Sometime in October, all the instructors, including Slifka, received evaluations. Reale handed Slifka a written evaluation but refused to discuss it with him. After reviewing the evaluation, Slifka could not recall anything negative in the evaluation. Reale told him he didn't have time to talk about it, that he was busy, that Slika should just sign it, and they would talk about it later.

On October 5, Slifka became aware of a very negative student evaluation by student Jamie Franczek. When Slifka expressed concern to Reale regarding Franczek's evaluation, Reale crumbled it into a ball, threw it on to a table, and told Slifka to disregard it. That day Slifka requested a meeting with Reale and Franczek to discuss the matter and such a meeting was held. After the discussion Reale told Slifka that Franczek's evaluation might go to corporate (CES) and there might be a reprimand, but that Slifka would be given a chance to defend himself. He never discussed the evaluation with Slifka again until briefly mentioning it at Slifka's discharge on October 25. Slifka never received any reprimand during his term of employment. Slifka never received a copy of his evaluation.

On October 25, Karnek was called away from his duties by Reale who wanted to see Karnek in his office. Reale advised Karnek he had reviewed his student evaluation and he did not believe that Karnek would work out as an instructor. He told Karnek he was a poor communicator and too soft spoken. He then showed Karnek a diagram of an accident which had occurred while Karnek was giving city driving instructions to student James Overbeck. Reale informed Karnek that he should not have had Overbeck at that location, at that time. He gave Karnek the option of resigning or being fired. Karnek refused to resign, and received no documentation referencing his discharge. Nor did he ever receive any oral or written warning regarding the Overbeck accident, nor did he receive any discipline as a result of this accident.

Sometime in October, Karnek received an instructor's evaluation from Reale. Karnek was given about 40 student evaluations to look at. He quickly leafed through them, read approximately two, and signed the evaluation form. He saw nothing derogatory in the evaluations and was given no criticism by Reale of his work performance. In late September, Reale told Karnek that he was one of the best instructors.

The record is rife with assertions propounded by Respondent witnesses that all three alleged discriminatees were inferior and unprofessional employees. Wolff allegedly smoked too near the building, smoked while instructing, lounged on the hoods of automobiles while instructing in the yard, used loud and abusive language, had a lackadaisacal attitude, had a bad attitude, displayed a foul mouth, was uncooperative, failed to walk with the trucks while instructing students in the yard, failed to pretrip at the proper time, conducted noisy classes, returned to the facility from road instruction to early, missed work by malingering, repeated tardiness, and dressed poorly for his initial job interview. Wolff admitted that he leaned against, and on cars while instructing, he did not always walk beside trucks while giving yard instruction and he smoked at times while giving instruction.

Respondent, by way of some specifics and by inference, alleged that Slifka used abusive language directed to students, swore at a female student, Kitis, cursed at students, called a female student, Yobp, ''a dirty bitch,'' spoke harshly to student Yoder, had a bad attitude, smoked while instructing, did not remain calm, without authorization made copies while he should be working, failed to pretrip at the proper time, conducted noisy classes in the yard, and returned to the facility from road instruction early. All of this testimony is hearsay.

Slifka testified he never directed any profanity toward students. The emphasis of Respondent as to the discharge of Karnek was his involvement as an instructor in an accident which occurred in early October. Other allegations directed to Karnek are poor communicator, too soft spoken, poor instructor, impatient, failure to pretrip at the proper time, noisy classes in the yard, returning too early from road instruction, inadequate knowledge of subject matter, lack of desire to instruct, and failure to walk beside truck while giving yard instruction.

Overbeck testified that personnel of Respondent spoke to him about his lack of confidence and concerns about city driving. Thereafter, according to Overbeck, he was given enough confidence and was supposedly ''ready for the city.''

Conclusion and Analysis

Wolff, Slifka, and Karnek were particularly impressive witnesses. It was clear to me that they made every effort to express honest renderings and accounts of what transpired. There was no attempt by any of them to embroider or color the facts. I fully credit their testimony in every regard.

By way of contrast, Reale attempted to dilute his testimony regarding the October 24 incident. He did this by eliminating the critical element—the threat. I discredit his testimony. Shortly after throwing the union literature on the ground and making his threat, he related the incident to Spratt, including in his version to Spratt, the threat.

Accordingly, I conclude that Reale's conduct violated Section 8(a)(1) of the Act.

In my view the criteria have been met to establish that Canterbury and CES constitute a single-integrated business and a single employer within the meaning of the Act.

Canterbury is a wholly owned subsidiary of the holding company CES. See *A.J.R. Coating Division Corp.*, 292 NLRB 148 (1988).

Stan Pikus is president of CES and Canterbury. Pikus is the ultimate authority for both. Only he can close the school. Pikus conferred with Reale, Spratt, and Jean Pikus before the discharges could be effectuated. Reale testified that Pikus, by

way of input, stated, ''Go ahead, fire them.'' There is daily communication between CES and Canterbury management.

Pamela Fish, clerk typist/receptionist, who worked for Spratt for about 7 months, testified that Canterbury didn't do anything without the ''say so of CES.'' She testified further, that CES Vice President Kevin McAndrews called Canterbury at least once a day to discuss financial aid matters with Canterbury's financial aid director. Moreover, according to Fish, Alan Manin, another vice president and also marketing director of CES, called Spratt three times a week, including a weekly 45-minute call to discuss Canterbury's budget. Fish placed one or two calls per week for Spratt to CES. Another vice president, Jean Pikus, called once a week to speak to Spratt and to Reale. Bob Steffanus, an outside admission officer (recruiter) testified regarding conversations with Spratt. One conversation reflected that CES was dissatisfied with Canterbury's sales results. Another conversation occurred regarding a CES policy with respect to student application deposits and money advances to students.

Canterbury and CES both have the authority to pay bills from the comingled funds in a bank account opened by Canterbury in Pittsburgh. CES takes its profits from the Canterbury operation out of this bank account, and can loan money to Canterbury by depositing funds into the account.

CES enacted budgetary and salary restrictions on Canterbury and CES refused to approve a salary increase for a Canterbury employee.

CES sent Canterbury paychecks and stubs from New Jersey to the Canterbury facility. The paychecks bore the legend ''Canterbury Educational Services, Inc.''

Canterbury and CES employees were covered by the same insurance plan except where not permitted by state insurance regulations.

When hired, Canterbury employees are given the same handbook as CES employees entitled, ''Canterbury Educational Services, Inc./Associates Handbooks.'' A subcaption reads ''Division Canterbury Career Schools, Inc.''

Pikus testified that every employee who works for any of the subsidiaries of CES, and every CES employee are subject to the same policies.

Testimony and documentary evidence reflect that CES has the sole authority over hiring and firing.

Thus the evidence overwhelmingly establishes that Respondent is a single integrated business enterprise and a single employer within the meaning of the Act.

The Alleged Discriminatees

Reale admitted that by the afternoon of October 24, he was aware of the union activity by Slifka, Wolff, and Karnek. The next day all three were fired. Counsel for the General Counsel has met its burden under *Wright Line*, 251 NLRB 1083 (1980), in establishing a prima facie case. Respondent has failed to establish a legal business justification for the discharges, thus it has not met its burden under *Wright Line*.

I have briefly made reference to Reale's credibility referencing his 8(a)(1) conduct. In my opinion, Reale prevaricated and fabricated throughout his testimony. He and Spratt could not tell a consistent story. Spratt gave an account of what he was told by Reale as to what happened in the yard, said version consistent with the versions of the discriminatees. Reale equivocated finally conceding—''I didn't know the statement I made was bad.''

Spratt was also an incredible witness, who was bent on coloring his testimony. Spratt did not recall Reale telling him during his conversation that he was going to fire the discriminatees. Reale testified unequivocally that he told Spratt that he was going to fire them the next morning, on October 25. Spratt, according to Reale, responded, ''Well, fire them.''

Memoranda from Reale to Jean Pikus lend further support to discrediting Reale. In Respondent's Exhibit 31, dated October 25, 1990, the fax imprint at the top of the document bears a date December 11, 1990. According to Reale, documents get lost and copies are sent thereafter. Reale couldn't remember if this was the situation with Respondent's Exhibit 31. Wolff is mispelled ''Wolf'' throughout the exhibit. Obvious is misspelled, ''Orevious.'' Occurred is misspelled ''Occured.'' The fax date of December 12, is about 1 month after the initial charge. I believe the document was concocted after the discharges by a nontypist, specifically for this litigation.

Similarly, Respondent's Exhibit 32 misspells Karnek's name, the signatory name and title are misaligned and the word ''communitive'' appears in line 12. This, I believe to be another bogus document.

Wolff admitted smoking while teaching, contrary to Respondent's rules, although Reale did not testify that he ever warned him. Interestingly, Reale's memo, Respondent's Exhibit 31, makes no mention of Wolff smoking.

Wolff perceived signs of discomfort and self-consciousness on the part of some students when he walked next to their trucks. Therefore he did not always walk alongside their trucks.

Wolff attributes his bad back to his occasionally leaning and laying on cars. He also admits to being criticized on two or three occasions by Reale. Reale was well aware of Wolff's back condition, and he never disciplined or threatened to fire Wolff. Respondent has not met its *Wright Line* burden. Accordingly, I conclude that Respondent fired Wolff in violation of Section 8(a)(1) and (3) of the Act.

Reale led Slifka to believe that the Franczek evaluation was of no great concern by crumbling it into a ball and throwing it on the table with the comment to Slifka that he shouldn't pay any attention to it. I consider all the student evaluations to be hearsay and inadmissable as evidence. Nor are they of any significance with respect to student dissatisfaction toward Slifka because the evaluations are dated October 24, several days after Respondent allegedly decided to discharge Slifka.

Slifka was told by Reale that if the evaluation was forwarded to CES, Slifka would have a chance to defend himself. There was no further discussion about this evaluation until Reale briefly brought it up, after Slifka's termination. Slifka received no reprimand, nor was he given a chance to defend himself. Reale failed to testify with respect to the import of the Franczek evaluation, with regard to what import was placed on it, in the decision to fire Slifka.

Slifka testified that he did not curse at or around Kitis, but that there was a misunderstanding, Slifka was wrongfully accused and the matter was dropped. Spratt stated he never even asked Kitis what was said or confirmed that anything was directed toward her. Here too, Respondent has failed to

meet its *Wright Line* burden, and I conclude that Slifka was fired in violation of Section 8(a)(1) and (3) of the Act.

Respondent advanced as the main basis for Karnek's discharge, his role as an instructor in an accident in early October. Respondent cannot point to any infraction by Karnek while he was in the truck, before or after the accident. Respondent took the position that Karnek had a student, Overbeck, perform city driving when he was not prepared for such. It is clear that Overbeck was nervous about city driving, was under pressure to complete this phase of the course, and that through discussion with several instructors, including Karnek, Overbeck had overcome his fears and gained enough confidence to be ready for city driving.

Karnek testified that Reale specifically told him to take students such as Overbeck, getting close to the period when they would be taking their drivers' tests, into the city. According to Overbeck, Reale did not tell him he should not attempt city driving.

Instructor evaluation of Karnek, done by Reale after the accident, made no mention of the accident. Karnek was never told he used poor judgment nor was he ever warned or disciplined. Karnek was allowed to continue to instruct for almost a month after the accident, despite Respondent's contention that he failed to safely direct Overbeck's training. Accordingly, I conclude that by discharging Karnek, Respondent engaged in violations of Section 8(a)(1) and (3) of the Act.

With respect to all three of the discriminatees, Reale testified that in spite of Spratt's opposition, he favored retaining the three discriminatees because he believed they deserved another chance. Reale testified he wanted to work with them to see if they could become better instructors. Moreover, these three employees were retained in the face of the myriad of alleged difficiencies. If Respondent, as contended, decided to terminate them in mid-October, why did it allow them to remain on the job 7 to 10 days later? They, according to Respondent, were terrible instructors whom Spratt wanted to fire weeks before. Pikus testified that Respondent needed to find replacements because there were students in a class and they couldn't go forward without having any instructors. In spite of this, Respondent introduced no testimony or documentary evidence of any efforts to hire replacements during those 7 to 10 days.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Teamsters, Chauffeurs and Helpers, Local 249 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent is a single-integrated business enterprise and a single employer within the meaning of the Act.

4. By discriminating with regard to the tenure of employment of Slifka, Wolff, and Karnek, because of their concerted and union activities, Respondent has violated Section 8(a)(1) and (3) of the Act.

5. By threatening employees that it would close its facility if they engaged in union activities, Respondent violated Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

I shall reccommend that the Respondent be ordered to offer Slifka, Wolff, and Karnek immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and priviliges. Respondent shall expunge from its files and record any references to the discharges of these individuals, and notify them in writing, that this has been done, and that evidence of their unlawful discharges shall not be used as a basis for future personnel actions against them.

In addition, Respondent shall make all these employees whole for any losses they may have suffered by reason of the discrimination against them, by payment to them, a sum of money equal to that which they would have normally earned from the date of their discharges, less net earnings during the period. Interest shall be computed according to current Board policy.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Canterbury Educational Services, Inc., Medford, New Jersey, and its wholly owned subsidiary, Canterbury Career Schools of Pittsburgh, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that it would close its facility should the employees select the Union as their collective-bargaining representative.

(b) Discriminating in regard to the tenure of employment of Slifka, Wolff, and Karnek because of their concerted or union activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Slifka, Wolff, and Karnek immediate and full reistatement to their former positions or, if such positions no longer exist, to positions which are substantially equivalent thereto, without prejudice to any seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrmination against them with interest as provided in the remedy section of this decision.

(b) Expunge from its files any references to the discharges of the employees named above and notify them in writing that this has been done, and that evidence of their unlawful

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

discharges shall not be used as a basis for future personnel action against them.

(c) Post at its facilities copies of the notice marked ''Appendix.''[4] Copies of the notice to be furnished by the Regional Director for Region 6, shall, after being signed by an authorized representative of Respondent, be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Preserve and, on reasonable request, make available to the Board or its agents for examination and copying, all payroll records and all other records necessary to ascertain the amount, if any, of backpay due under the terms of this Order.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''